Rick Egan/The Sal

Salt Lake attorney Ron Yengich argues for a term-limits initiative Monday before the Utah Supreme Court. Bac initiative seek to block circulation of an information pamphlet that claims Utah already has a term-limits law.

SALT LAKE TRIBUNE
TUE. OCT. 4, 1994
M/035/002

High Court Won't Hear Aquifer-Pollution Case

By Mike Gorrell
THE SALT LAKE TRIBUNE

The U.S. Supreme Court refused Monday to get involved in a lawsuit seeking compensation from Kennecott Corp. for allegedly polluting a major aquifer beneath the Salt Lake Valley.

Without comment, the justices declined to consider an appeal that Kennecott and the state filed after U.S. District Judge Thomas Greene rejected their settlement of a "natural-resource damage claim" against the company for groundwater contamination allegedly caused by the Bingham Canyon copper mine. Water in the contaminated aquifer could serve a quarter-million people or more.

The court's inaction represented a victory for the Salt Lake County Water Conservancy District, which had intervened in the case and agreed with Greene's determination that the proposed settlement was financially inadequate to provide for a suitable cleanup.

"We're quite pleased. It puts us back in the process. Maybe we can restructure [the settlement] so that we can develop something acceptable to Kennecott, the state and us," said Water Conservancy District director Dave Ovard. "Hopefully, we can get back to work and take care of this problem."

While disappointed, officials with Kennecott and the state said they were not surprised by the court's stance.

"The Supreme Court grants very few petitions in cases like this," said Kennecott spokeswoman Alexis Fernandez.

Added Utah Department of Environmental Quality executive director Dianne Nielson: "They had 7,000 cases last year and wrote opinions on 100. I'm certainly disappointed they didn't hear the case because there was a point to be heard. The settlement we reached was reasonable and should have been accepted."

But since it was not, attorneys for the

■ See HIGH COURT, A-4

Justices Start New Term With Old Slate

By Joan Biskupic
THE WASHINGTON POST

WASHINGTON — The Supreme Court, in an unprecedented step in modern court history, accepted no new cases on the opening day of its 1994-95 term.

The refusal Monday to add any cases, when 15 to 20 appeals usually are taken on the first day, is part of a trend that moves the high court away from center stage. The court's diminished docket shifts power to lower courts, lets stand conflicting interpretations of the law and leads activists to take their causes to state courts and elected officials.

The court denied more than 1,600 appeals that had been filed during the summer recess.

Without comment, the justices left intact a ruling that school officials can be liable when students are sexually molested, let stand a decision that Fairfax Hospital in suburban Virginia must continue to provide emergency treatment to a 2-year-old girl born with a partial brain, and rejected a challenge to a ruling that government prosecutors committed fraud in the extradition of an accused Nazi death-camp guard.

Numerous petitions are pending, and the court will take more cases for the new term. Still, it is striking that only 48 cases are on the calendar, carried over from previous terms or accepted in a special order last week. This is the least number of cases scheduled at this time of year in at least three decades, even as the number of petitions to the court continues to climb. Court

■ See JUSTICES, A-4

Mike Espy

Probe Into G Forces Espy Quit Agricul

By Robert Greene
THE ASSOCIATED PRES

WASHINGTON — Ag Secretary Mike Espy resig day, saying an investiga gifts he accepted from pe companies that do busines department was too distra him to remain. He predict be exonerated.

"I owe it to the presiden his agenda to go throug minimum of distraction," in announcing he would Cabinet effective Dec. 31.

President Clinton readil ed the resignation from c most ardent and loyal su But a separate investigati White House turned up m aging information: that E friend, Patricia Dempsey cepted a $1,200 scholarsh foundation run by Arkan Tyson Foods Inc.

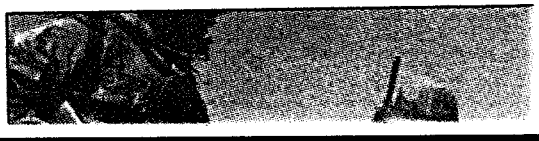
■ See ES

0022

U.S. Troops Disarm Haitian Paramilitary Gr

By Kenneth Freed and Mark Fineman
LOS ANGELES TIMES

PORT-AU-PRINCE, Haiti —



M/035/002

ustices Will Not Take Any New Cases

Continued from A-1

okeswoman Toni House said onday's refusal to take any ses was unprecedented as far as urt personnel could determine. One explanation for the court's rinking caseload "is that it re-ects another version of gridlock, lack of governance," said orgetown law professor Mark shnet. "It may be more of a re-tance to do anything [that pre-nts the court from taking more ses], rather than the lack of reement" that thwarts action in ngress. "But even on the urt," Tushnet added, "the jus-es may be anticipating that they e sharply divided" and choose t to take up certain cases.

University of Notre Dame law ofessor Douglas Kmiec added at the pragmatic, centrist ap-oaches of many of the justices ike them reluctant to reach out controversial issues or take up ases. He referred specifically Justices David Souter, Ruth der Ginsburg and Stephen eyer, who defy characteriza-ns of conservative or liberal. It es four votes to accept a case oral arguments.

Yet, as the Rehnquist court di-nishes its profile, "That's no arantee that it won't continue, occasion, to throw a bomb or o that people at both ends of spectrum would protest," said rvard law professor Laurence be.

Overall, the caseload is drop-g to half of what it was in the 30s (84 last term, compared h 150 in the mid-1980s). Thus, er federal courts and state su-me courts get more power.

Theories abound for the drop-, tied mostly to the conserva-e and cautious nature of the rent court. One prevailing the-is that because the lower urts still are dominated by con-vative appointees from the agan and Bush era, the high urt generally agrees with most he rulings that are being chal-ged. Still, the current justices mselves have become self-con-ous about the trend, comment-on it in speeches, but insisting t their standards for taking es have not changed.

Clearly, however, Chief Justice

High Court Won't Hear Aquifer Case

■ Continued from A-1

company, state and water district will begin preparing again for a trial on the natural-resource damage claim. And there is always a chance that the parties will reach a different settlement before the case gets back to court.

"We haven't been incommunicado since the appeal was filed," Fernandez noted. "There have been ongoing discussions with all the parties involved, and there will be more talks."

The state filed the suit against Kennecott in 1986, contending that mining activities in Bingham Canyon had contaminated a southwest Salt Lake Valley aquifer that could supply the annual water needs of anywhere from 240,000 to 440,000 people. The claim estimated the damaged water was worth about $129 million.

In 1991, Kennecott and the state reached a settlement requiring the company to pay $12 million to the state, which would drop its lawsuit. The state would have retained the right to seek more money from Kennecott if the contamination was greater than expected.

At that point, the Water Conservancy District filed a motion to intervene, claiming that its interests as a political subdivision of the state had not been protected adequately by the state.

The Water Conservancy District maintained that natural-resource damage claims could not be settled until after the contamination was cleaned up, a process it figured could cost $35 million to $40 million. It also claimed the defiled groundwater plume was much larger than Kennecott and the state believed.

After a six-day hearing in October 1991, Greene rejected the settlement and ordered an evidentiary hearing to consider the nature, extent and value of the natural-resource damage, the feasibility of fixing the problem, and the nature and extent of the Water Conservancy District's interest in the underground water supply.

The state and Kennecott appealed Greene's decision to the 10th U.S. Circuit Court of Appeals but lost. They then took the case to the U.S. Supreme Court.

Justices Reject Demjanjuk Extradition Case

THE ASSOCIATED PRESS

WASHINGTON — The Supreme Court on Monday let stand a ruling that government lawyers committed fraud in winning John Demjanjuk's 1986 extradition to Israel as a Nazi war criminal.

The high court's action on the first day of its 1994-95 term could be a blow to the government's effort to force Demjanjuk out of the country again.

The retired Cleveland auto worker was allowed to return to this country last year, but government lawyers say they remain convinced he is a war criminal.

The 6th U.S. Circuit Court of Appeals ruled last November that Justice Department lawyers defrauded the courts by failing to turn over evidence in Demjanjuk's favor.

He was convicted and sentenced to death in Israel in 1988 for being "Ivan the Terrible," a Nazi guard who tortured and killed Jews at the Treblinka death during World War II.

Israel's Supreme Court overturned his conviction last year as a case of mistaken identity, and Demjanjuk later returned to this country.

Government officials now want a federal judge to reaffirm a separate 1981 decision that stripped Demjanjuk of his U.S. citizenship on the grounds he lied about his past when emigrating to this country.

The 6th Circuit court said the government should have disclosed statements from two Treblinka guards who identified another man as "Ivan the Terrible."

Justice Department lawyers said the lawyers acted in good faith, and therefore the 6th Circuit court lacked the authority to reopen the case.

"If left undisturbed, there is a significant likelihood that the decision below will hinder the government's efforts to remove [Demjanjuk] from the United States," Solicitor General Drew Days said in the appeal.

Study: Gi If Their M

By Lauran Neergaard
THE ASSOCIATED PRESS

WASHINGTON — The daug ters of women who smoke duri pregnancy — but not the sons may be biologically predispos to smoke, a new study contends. suggests prenatal nicoti "primes" a fetus' brain.

Animal studies have shown pr natal nicotine does affect certa brain activity once the animal grown.

But scientists never pursu that link in humans because one had ever found a relationsh between children's tendency smoke and prenatal exposure until now.

"What this really shows is the may be subtle effects on bra function that won't become a parent until 13, 14, 15 years l er," said Denise Kandel of C lumbia University. "It's anoth reason women shouldn't smoke

Teen-age girls were four tim more likely to smoke if the mothers smoked while pregnar a risk that remained even wh researchers controlled for soci influences, Kandel reported in t day's *American Journal of Pu lic Health*.

Kandel theorized that nicotin which can cross the placenta ba rier, stimulates a fetus' recepto for dopamine, the brain chemic involved with drug addictio This "priming" may predispo girls to smoke, Kandel contende

But prenatally exposed bo were not at risk. Kandel sugges ed it is because male hormon may protect the male fetus.

"It is a very interesting and pr vocative paper," said Nigel Pa eth, an expert on pediatric epid miology at Michigan Stat University. "If this really ha pens, from a biological point view . . . that's very intriguing."

But he cautioned that, despi Kandel's controls, the results ma mean daughters are simply cop